

Conversely, claimant requests the Board to affirm the Order. Claimant asserts her claim is one for a repetitive trauma injury and that the appropriate date of accident is her last day of work or exposure, which was April 30, 2004. Moreover, claimant contends she gave respondent timely notice of her medical condition and notice that she was attributing her symptoms to the mold at work.

The issues before the Board on this appeal are:

1. Did claimant sustain an accidental injury that arose out of and in the course of her employment with respondent, or did she develop an occupational disease from the work she performed for respondent?
2. If so, did claimant provide respondent with timely notice of the accidental injury or occupational disease?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes:

Claimant began working for respondent in April 2002 as a charge nurse. After several months, claimant began experiencing fatigue, forgetting things, headaches, skin rashes, skin discoloration, loss of sleep, weight loss, and swelling. As time progressed, so did claimant's symptoms, which she eventually attributed to being exposed to mold at work.

Claimant sought medical treatment for her symptoms and was given thyroid tests, which were normal. In August or September 2003, claimant began seeing an allergist, who tested her for allergies related to mold. But those test results were also normal. The allergy tests, however, did indicate claimant had a slight allergy to dust mites. Claimant tried allergy medications and antidepressants but those medications did not alleviate her symptoms.

Next, in October 2003, claimant saw an infectious disease specialist, who ran blood tests and found no evidence of bacterial or fungal disease.

During late 2003 and early 2004, respondent addressed the mold problem in the Goddard, Kansas, facility where claimant worked. Mold was found in the basement and found upstairs in two shower room walls, kitchen dish room, dining room, north hall room 117, main hall nutrition room, beauty shop, administrator's office, main hall public restrooms, north hall nurses supply room and adjoining mechanical room, south hall mechanical room, main mechanical room, activity office and adjoining north kitchen wall, and the laundry room.

Respondent completed its clean-up and repairs in February 2004. According to respondent's regional manager, Marla Nispel, both the Occupational Safety and Health Administration (OSHA) and the State of Kansas were satisfied with the manner respondent

addressed their inquiries. Ms. Nispel is aware of no other employees or residents of the facility who have complained of having problems due to the mold.

Thinking her symptoms might be related to her work in respondent's nursing home facility, claimant terminated her employment with respondent on April 30, 2004. Claimant testified that when she left respondent's employ she was having difficulty charting and remembering her patients' medications.

Claimant was unable to find a Wichita, Kansas, physician who had expertise in treating mold-related problems. But claimant learned of Dr. Andrew W. Campbell of Spring, Texas, who holds himself out as a specialist and expert in mold exposure cases. Consequently, in June 2004 claimant saw Dr. Campbell for the first of three visits. Dr. Campbell's clinic billed claimant over \$26,000 for the initial round of tests claimant underwent at her June 23, 2004, visit.

At the preliminary hearing, claimant introduced Dr. Campbell's February 12, 2005, medical report. The doctor diagnosed mycosis, immune suppression, and demyelinating neurological disease, all three of which were secondary to being exposed to toxigenic mold at respondent's Goddard, Kansas, nursing home facility. Claimant also introduced several articles that Dr. Campbell purportedly co-authored that address the effects of toxic mold. Those articles indicate the doctor holds himself out as "an Expert Medical Scientist in Immunotoxicology and the Medical Director and Chief Executive of the Center for Immune, Environmental, and Toxic Disorders, Houston, TX."¹

At this juncture of the claim, there is not a large amount of medical evidence. Nevertheless, in addition to Dr. Campbell's report, the record does contain the office notes from the allergist, Dr. Mark A. Hilger. Claimant saw Dr. Hilger in September 2003 and reported problems with breathing, her blood pressure, sinuses, weight loss, and urinary problems. The doctor concluded claimant had allergic rhinitis but there was no evidence it was caused by an allergic reaction to mold.

Respondent and its insurance carrier also introduced the October 14, 2003, medical report signed by both Dr. Hewitt C. Goodpasture and Dr. Chau-Thuong T. Nguyen-Dang. That medical report listed a multitude of claimant's symptoms, including:

[L]ow back pain, frontal headache, sore throat, dark urine, frequency/urgency, sensation of shortness of air, shakiness, tremor, pounding heart rate, fatigue, lack of ambition, labile emotion, increased forgetfulness, decreased concentration,

¹ P.H. Trans., Cl. Ex. 1.

weight loss of 16 pounds in the last three months, excessive daytime somnolence, and insomnia since January 2003.²

But the report specifically states that claimant denied having any rash. And the examination of claimant's skin indicated she did not have a rash.

According to their medical report, Drs. Goodpasture and Chau-Thuong T. Nguyen-Dang thought claimant had chronic fatigue and immune dysregulation syndrome. But the doctors did not relate those diagnoses to mold.

Based upon this record, the Board is not persuaded claimant's symptoms are related to a mold exposure at respondent's nursing home. Dr. Campbell's opinions and credentials are yet to be tested by cross-examination in this claim. Moreover, the doctor's charges are substantial and give the appearance, rightly or wrongly, that the doctor may have a financial interest in the outcome of this claim. Moreover, the record does not explain how claimant's symptoms are related to mold when the medical tests performed by the Kansas physicians failed to reveal any bacterial or fungal infections, allergic reactions to mold, or any blood disorder.

Further, this Board has held that an exposure to mold over a long period of time is more in the nature of a disease than an accidental injury in the context of the Workers Compensation Act. Moreover, in the *Walker*³ claim, the majority held that the ill effects from being exposed to mold in the medical clinic where the worker worked were not compensable as an occupational disease under the Workers Compensation Act as the worker's occupation as a nurse did not create a particular or peculiar hazard that distinguished the job from other occupations and employments, as required by K.S.A. 44-5a01(b). Although this Board Member might not agree with that holding, it does not appear that a majority of the Board has modified its position in any later decision.

In summary, the preliminary hearing Order should be reversed.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.⁴

² P.H. Trans., Resp. Ex. 4.

³ *Walker v. Via Christi Health System*, No. 242,959, 2002 WL 31103958 (Kan. WCAB Aug. 30, 2002) (appeal to Kansas Court of Appeals dismissed by stipulation).

⁴ K.S.A. 44-534a(a)(2).

WHEREFORE, the Board reverses the April 6, 2005, preliminary hearing Order. Claimant's request for preliminary hearing benefits is denied.

IT IS SO ORDERED.

Dated this ____ day of June, 2005.

BOARD MEMBER

c: Stephen J. Jones, Attorney for Claimant
William L. Townsley, III, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director